IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2183 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

PRAGNABEN S SHAREDALAL - Petitioner(s)
Versus
COLLECTOR - Respondent(s)

==========

Appearance :
MR DC DAVE for Petitioner(s) : 1,
MR DIPEN DESAI ASST GOVERNMENT PLEADER for Respondent(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 10/07/2006

ORAL JUDGMENT

1. By way of this petition under Article 226 of the Constitution of India, the petitioner has challenged the legality and validity of the order

passed by the Collector, Dangs-Ahwa dated 14.2.1995 / 2.3.1995 in rejecting the representation submitted by the petitioner for modifying the earlier order passed by the Collector, Dangs-Ahwa dated 15.11.1991 and to continue the order of confiscation of Plot No.15/B situated at Saputara.

2. Plot No.15-B ad-measuring 2000 sq.yards was allotted in favour of the petitioner by order dated 20.7/11.1980 subject to certain conditions and one of the conditions was to put up the construction of residential building within a period of two years. It appears from the record that the petitioner submitted plans for putting up construction and the permission was granted by order dated 18.7.1989 on certain conditions. Even as per said conditions, the petitioner was required to put up the construction within a period of two years from the date of such permission. It was found that till 15.3.1990

there was no progress at all for the purpose of putting up construction and therefore, the attention of the petitioner was drawn to put up construction within a stipulated time. It appears that according to the petitioner, due to some internal family problems and other circumstances, she could not put up construction and therefore, she applied for extension of time for further period of 12 months. It also appears from the record that by communication dated 6.4.1991 the petitioner was informed to start construction and complete the same and was also informed that if within stipulated time the construction is not completed then, the allotment of the plot in question can be cancelled. Thereafter, after giving an opportunity to the petitioner, order dated 15.11.1991 came to be passed cancelling the allotment in favour of the petitioner and forfeiting the land to the State Government and also the amount of Rs.3,000/-. It appears from the record that being aggrieved and dissatisfied

with the said decision, the petitioner preferred Special Civil Application No.10951 of 1994 before this Court which came up for hearing before the Hon'ble Brother Judge (Coram : S.D.Dave, J.) and it was the case on behalf of the petitioner that in favour of some other persons the period has been extended and other similarly situated persons are permitted to put up the construction subsequently. Therefore, this Court by order dated 24.11.1994 relegated the petitioner to submit an appropriate representation before the Collector, Dangs-Ahwa and to point out the said instances, if any, and to reconsider the decision dated 15.11.1991. It appears that thereafter pursuant to the order passed by this Court passed in aforesaid Special Civil Application No.10951 of 1994, the petitioner submitted a detailed representation on 5.12.1994 and it also appears that in para-5(iii) of the said representation,the petitioner has given instances in case of (i) J.K.Dudhani, (ii)

Majulaben Bharadwaj and (iii) Pushpaben Becharbhai and it was requested to give similar treatment to the petitioner. Thereafter, the impugned order came to be passed by the Collector, Dangs-Ahwa dated 14.2.1995 / 2.3.1995 rejecting the representation submitted by the petitioner and not modifying the earlier order and continuing the earlier order dated 15.11.1991 forfeiting the plot in question to the State Government. Being aggrieved and dissatisfied with the order passed by the Collector, Dangs-Ahwa dated 14.2.1995 / 2.3.1995, the petitioner has preferred the present Special Civil Application under Article-226 of the Constitution of India.

3. Shri Shivang Shukla, learned advocate appearing on behalf of the petitioner has submitted that though pursuant to the order passed by this Court passed in Special Civil Application No.10951 of 1994, the petitioner submitted a detailed representation and has also

given specific instances to point out that in favour of those persons time limit has been extended and they are permitted to put up construction subsequently, still the same has not been dealt with by the Collector, Dangs-Ahwa and therefore, the impugned order passed by the Collector, Dangs is discriminatory and violative of Article-14 of the Constitution of India. It is submitted that in favour of the other persons whose names have been mentioned in the representation, some favourable orders were passed and so far as the petitioner is concerned, time limit has not been extended and the plot in question has been forfeited to the State Government on the ground that construction has not been put up within a period of two years and therefore, it is requested to allow the present Special Civil Application.

4. Shri Dipen Desai, learned AGP appearing on behalf of the respondents while supporting the

order passed by the Collector, Dangs has submitted that though the petitioner might have given instances in the representation but it appears from the order passed by the Collector, Dangs that such point might not have been argued and/or pressed into service by the petitioner as there is no reference to the said submission in the order passed by the Collector, Dangs and therefore, it is not open for the petitioner to contend that the said aspect has not been considered. He has submitted that even otherwise on merits, the impugned order is in accordance with law and after having found that construction was not put up within a period of two years from the date of granting of building permission, the plot in question has rightly been forfeited and therefore, it is requested to dismiss the present Special Civil Application.

5. Earlier the petitioner preferred Special Civil Application No.10951 of 1994 and it was

contended on behalf of the petitioner that in similar fact situation in cases of other three persons, the allotment has been continued and further time has been granted with a view to commence and complete construction. Considering the said submission, this Court (Coram : S.D.Dave, J.) had relegated the petitioner to approach the Collector, Dangs by way of necessary representation in this respect. It was observed by this Court that the petitioner can narrate the instances narrated in the pleadings with a view to urge that if some action favorable to the allottees has been taken by the Collector, Dangs, there should not be any question of discrimination against her. It appears from the record that pursuant to the same, the petitioner has submitted written representation and cited instances with regard to three persons viz. (i) J.K.Dudhani, (ii) Majulaben Bharadwaj and (iii) Pushpaben Becharbhai, before the Collector and still, from the impugned it appears that the

same have not been dealt with by the Collector, Dangs. Though, a specific averment has been made in the petitioner that such contention was raised, the same has not been disputed by the Collector, Dangs in the affidavit-in-reply. Under the circumstances, the matter is required to be remanded to the Collector, Dangs for deciding the said aspect afresh in accordance with law and on merits and the Collector, Dangs is required to consider “whether instances of the aforesaid three persons are comparable with the case of the petitioner or not; and if ultimately it is found that they are comparable and orders in favour of the aforesaid three persons are in accordance with law; and whether the same benefit should be given to the petitioner or not”. When the specific order was passed by this Court, Collector, Dangs was required to at least consider the case of the petitioner along with other three persons whose names have been mentioned in the application.

6. For the reasons stated above, the petition succeeds in part. The judgment and order passed by the Collector, Dangs – Ahwa dated 14.2.1995 / 2.3.1995 is hereby quashed and set aside and the matter is remanded to the Collector, Dangs for deciding the aforesaid aspect i.e. “whether the instances of the aforesaid three persons viz. (i) J.K.Dudhani, (ii) Majulaben Bharadwaj and (iii) Pushpaben Becharbhai, in whose favour it is alleged that further time was granted to commence and complete the construction, are comparable with the case of the petitioner or not; and if ultimately it is found that they are comparable and orders in favour of the aforesaid three persons were in accordance with law; then, the Collector, Dangs is directed to consider the case of the petitioner in light of the orders passed in cases of aforesaid three persons and to reconsider his earlier decision with regard to forfeiture of the plot in question to the State

Government. Such an exercise is to be done within a period of six months from the date of receipt of this order. However, it is clarified that this Court has not expressed any opinion on merits and in favour of either party.

7. Rule is made absolute to the aforesaid extent, however, there shall be no order as to costs.

[M.R.Shah, J.]

=kailash=